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Melissa Newman
Vice President - Federal Regulatory

August 18, 1999

EX PARTE

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street SW, TW-A325
Washington, D.C. 20554

Dear Ms. Salas:

CC Docket No. 96-98
UNE Remand Proceeding

U S WEST hereby comments on a proposal by MCI in the UNE remand proceeding to the effect that local switching should be deemed to meet the impairment test of Section 251(d)(2) of the 1996 Act with one exception. That exception is that switching at or above the DS1 level would not need to be unbundled and offered at TELRIC prices to CLECs for the top MSAs. We have several observations.

Initially, it is not clear that the MCI proposal would really accomplish anything, even what it seems to claim to accomplish. We read this proposal as meant to agree that unbundled switching would not be required by regulation to be provided to that customer group (i.e., mid-size to large business customers) already served by or available to CLECs for service. It is our opinion that no rule could comport with the Supreme Court's *Iowa Utilities Board* decision which held that the impairment test was met for unbundling even though the target customer group for that facility/service was already being served by competitors. But it is not clear that the MCI proposal would exempt from unbundling even those facilities used to provide switching to very large business customers. The reason is this. Voice grade circuit switching is internally switched at the DS0 level. Even in the case of customers who purchase T1 services directly to the switch, the internal switching for voice services is still done at the DS0 level—otherwise the calls could not be directed to their proper destinations.

In a digital switch environment, every voice circuit is switched internally at a DS0 level. Routing of the voice circuit between switches is achieved by joining 24 DS0 channels internally at the switch onto a single T1. Since the industry is moving towards an all digital switch

environment, eventually switching will be accomplished at a higher level. However, today switching is at the DS0 level.

It is possible to specify the speed of the switch port as the critical distinguishing factor in the impairment analysis—i.e. switching would not need to be offered as a UNE if the switch port was DS1 or higher, which would exclude switching where DS1 trunks connected directly to the switch. However, even this variation could be easily evaded by a CLEC by simply placing a multiplexer immediately in front of the switch. The multiplexer could multiplex the DS1 channel into its voice grade DS0 components and deliver the voice signals at that level. The digital switch however does not accept voice circuits at the DS0 level. Especially because the affected customer group is already served by CLECs, any inefficiencies which adding the multiplexer would cause would be negligible. In fact, in a number of cases U S WEST uses DS1 transport at the central office and connects through a multiplexer to the circuit switch in exactly this manner.

The real difficulty with the MCI proposal is that MCI's approach deviates from sound economics and seeks to establish an unbundling structure based on who the customer is. It is by now a truism that large business customers have a wide variety of competitive choices in telecommunications choices available. Competition has not yet grown to the point that we can say the same thing about the average small business or residential customer. Thus a search has been underway for a compromise position which would reflect where competition has already become entrenched, rather than one based on economic analysis.

We are very concerned that adoption of a structure which is not based, at its foundation, on sound economics could be counterproductive, both failing to achieve the purpose of the compromise as well as creating unnecessary legal risks for the entire industry. U S WEST is convinced that the approach to switching which it has proposed—assumptions based on the proximity of a CLEC switch—is the best way of proceeding. U S WEST's use of a fifty mile radius for geographic measurement, plus the existence of a single CLEC switch in this area, is a fair and reasonable approach. We do not recommend deviating from it. However, several observations are offered which may be able to assist the Commission in its analysis.

- If the Commission is convinced that the specific formula used in the U S WEST approach will impair the ability of efficient competitors to serve the residential marketplace, we suggest that the Commission find ways to compromise which do not compromise sound economics. Perhaps the Commission could consider constricting the mileage used in the U S WEST formula (e.g., to forty miles—even though, as U S WEST has pointed out, the fifty miles used by U S WEST is quite conservative), or otherwise modifying the U S WEST formula. It would not be reasonable to deviate from sound economic principles in order to reach a result which economics will not support—even if the result may seem appropriate for other reasons. It would make sound economic sense to increase the number of CLEC switches within a smaller radius.
- Some have stated that the U S WEST proposal might produce uneconomic results in some instances—e.g., where a CLEC had a switch in an area which was totally dedicated to a single large customer, it still might not be economically reasonable for another CLEC to install a

- second competitive switch without the stability which the single customer would bring. While U S WEST does not agree with this concern, we point out that the U S WEST switching formula establishes only presumptions, not conclusions. If an anomaly appears, the U S WEST formula is sufficiently flexible to permit state regulators to deal with it.
- Note that any rule based on technology is subject to obsolescence as technology changes—an especially important consideration in the dynamic telecommunications marketplace of today.
- Finally, U S WEST submits that it is really crucial that the FCC, ILECs and CLECs alike keep in mind the requirements imposed by the Supreme Court. in *Iowa Utilities Board.* Establishment of a structure for switching unbundling which did not recognize that the requirement that economic impairment to competition be shown before UNE unbundling can be ordered is a prime directive for the industry in the wake of this landmark decision. Based on the foregoing, U S WEST submits that the FCC not adopt a UNE unbundling rule for switching based on switching of DS1 circuits. Some variation of the U S WEST presumptions formula would far better serve the interests of the entire industry.

In addition to the foregoing, we take this opportunity to provide additional information on CLEC collocation and switch deployment within MSA's served by U S WEST. Earlier information provided by U S WEST had focused on geographic "zones" used for special access unbundling. As these "zones" apparently will become significantly more flexible in the near future, U S WEST submits this MSA data in order that the Commission may have an alternate geographic frame of reference for analyzing the competitive availability of local switching.

Attachment A provides a summary, by U S WEST MSA, of the number of competitors who have collocated equipment in U S WEST wire centers who also own their own switches, and the number of access lies in each MSA.

Attachment B provides a summary of the number of MSAs in the top 50 MSAs in U S WEST's territory with between four and eleven competitors with their own switches.

Attachment C provides the same information for the top 75 MSAs within U S WEST's territory.

Attachment D provides a summary of collocated competitors with switches for each U S WEST MSA within the top 150 MSAs.

In accordance with Section 1.1206(b)(2) of the Commission's Rules and Regulations, the original and one copy of this letter, are being filed with your office. Acknowledgment and date of receipt of this transmittal is requested. A duplicate of this letter is provided for this purpose.

Please contact me should you have any questions concerning this matter.

Sincerely,

Melissa Newman

Melissa Newman

Attachments

CC: Jake Jennings
Chris Libertelli

COLLOCATION SUMMARY DATA

MSA RANKING (from Huber Report)	MSA	# Collocators with Switches	# Access Lines in MSA
12	Phoenix	11	1,806,397
13	Minneapolis/St. Paul	9	1,602,697
21	Seattle/Tacoma	8	1,425,362
26	Denver/Boulder	11	1,642,979
45	Salt Lake City	4	697,537
69	Tucson	3	465,192
74	Omaha	3	336,257
77	Ablquerque	3	371,455
102	Colorado Springs	3	293,369
117	Des Moines	1	264,026
120	Spokane	3	231,084
128	Boise	3	242,636
143	Provo	0	150,900
150	Salem	1	152,856

Collocated Competitors w/Switches by MSA		
Top 50 MSAs		
Number of Competitive Switches per MSA	Cumulative Count	Cumulative Lines Served
11 or more	2	3,449,376
10 or more		
9 or more	3	5,052,073
8 or more	4	6,477,435
7 or more		
6 or more		
5 or more		
4 or more	5	7,174,972

Collocated Competitors w/Switches by MSA		
Top 75 MSAs		
Number of Competitive Switches per MSA	Cumulative Count	Cumulative Lines Served
11 or more	2	3,449,376
10 or more		
9 or more	3	5,052,073
8 or more	4	6,477,435
7 or more		
6 or more		
5 or more		
4 or more	5	7,174,972
3 or more	7	7,976,421

Collocated Competitors w/Switches by MSA		
Top 150 MSAs		
Number of Competitive Switches per MSA	Cumulative Count	Cumulative Lines Served
11 or more	2	3,449,376
10 or more		
9 or more	3	5,052,073
8 or more	4	6,477,435
7 or more		
6 or more		
5 or more		
4 or more	5	7,174,972
3 or more	11	7,976,421
2 or more		
1 or more	13	9,531,847